

Message

From: Green, Douglas H. [DHGreen@Venable.com]
Sent: 11/28/2018 10:36:21 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: IPL and CCR beneficial use

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Hi David – this is a follow-up to our earlier calls and IPL’s letter of November 1, 2018 requesting EPA to correct the erroneous preamble statement in the proposed Phase One CCR rulemaking that CCR meeting the rule’s beneficial use criteria cannot be used in closing CCR impoundments. As that letter details, the preamble statement is at odds with the plain text of the CCR rule which makes clear that, provided CCR is used in a manner meeting the rule’s beneficial use criteria (including meeting the fourth criterion demonstrating that such use will be protective of human health and the environment), the beneficial use of CCR is not subject to the CCR rule and such CCR can be used to close impoundments, including those subject to forced closure.

We understand that EPA’s Office of General Counsel concurs with the legal position set forth in the IPL letter and that the Agency is evaluating the appropriate mechanism for formally correcting the erroneous preamble statement, including possibly making this formal correction in the anticipated Phase 2 CCR proposal. IPL continues to encourage EPA to do so as soon as possible.

However, pending this action and to avoid IPL continuing to needlessly forego the beneficial use of CCR to close its units and instead mine borrow soil to serve the same purpose, we ask that your office reply to this email confirming that EPA concurs with the position set forth IPL’s letter. Thank you for helping to correct an erroneous position and to assisting in encouraging the environmentally protective beneficial use of CCR.

Please contact me with questions.

Regards, Doug Green

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